Restrictive practice use in residential aged care facilities

Factsheet – Informed consent for the use of a restrictive practice

What is a restrictive practice?
A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a care recipient. From 1 July 2021, legislation changes took effect, which replaced the term ‘restraint’ with ‘restrictive practice’.

What is informed consent?
Informed consent means that a care recipient or a substitute decision maker has:
• been provided with relevant information
• had the opportunity to review and ask questions about the use of any restrictive practice
• subsequently made a decision to have a restrictive practice used as part of their care.

Support and assistance should be provided to a care recipient to make their own decisions about the use of a restrictive practice. This includes communicating with them in a way they can understand. Providing care recipients and their substitute decision-makers written information ensures they can review at any time.

Who can consent to the use of a restrictive practice?
It remains an expectation for providers that informed consent is required prior to the use of any restrictive practice, with exceptions only applying in an emergency. If a care recipient does not have capacity to provide consent, it must be obtained from someone with the authority under state and territory law.

This person with authority under the state and territory law is referred to as a restrictive practices substitute decision maker, as defined in Quality of Care Principles 2014.

For the use of a chemical restraint, the approved provider must be satisfied that informed consent to the prescribing of the medication has been given by the care recipient. The restrictive practices substitute decision-maker must give consent if the care recipient does not have the capacity.

Before the restrictive practice is used, informed consent must be obtained, unless the restrictive practice is needed in an emergency.

Informed consent needs to be obtained each time for use of new restrictive practices. Even where informed consent has been provided previously.

Providers are also required to ensure the use of a restrictive practice is consistent with the Charter of Aged Care Rights and state and territory laws.

Guardianship rules are different in each state and territory. Approved providers must keep up to date with the state and territory legislative requirements for the state or territory in which they operate.
What if a care recipient does not have a restrictive practices substitute decision maker?

If a care recipient does not have a restrictive practice substitute decision maker or equivalent for the state/territory in which the aged care facility operates, the care recipient will need to appoint someone or apply to the guardianship board or tribunal in their state or territory. The tribunal can appoint a guardian and/or administrator on their behalf.

Can consent be withdrawn?

Care recipients or their restrictive practice substitute decision-maker may withdraw their consent at any time. The person who gives consent can also withhold consent. Therefore, the approved provider should take steps to communicate regularly with the care recipient or their substitute decision maker. This includes confirming their decisions and informed consent for the use of a restrictive practice.

Any decision to override a person’s decision regarding the use of a restrictive practice must be dealt with under state and territory legislation.

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Documenting informed consent

The *Quality of Care Principles 2014* require approved providers to have a record of informed consent from the care recipient or substitute decision maker.

If a restrictive practice is used in an emergency, aged care providers must inform the care recipient’s substitute decision maker about the use of the restrictive practice. This must occur as soon as practical after its use and must be documented.

Providers must document evidence that other strategies were used prior to the use of a restrictive practice. Evidence of consent for use of the restrictive practice must also be documented.

From 1 September 2021, providers are required under the Principles to have a Behaviour Support Plan in place for every consumer who exhibits behaviours of concern or changed behaviours, or who has restrictive practices considered, applied or used as part of their care.

The Behaviour Support Plan forms part of the care and services plan, it does not replace it. The Principles outline the requirements of the Behaviour Support Plan, and includes information on assessments, monitoring, review, evaluation and provision of consent.

The Behaviour Support Plan must also include consent from the consumer, or their restrictive practices substitute decision maker.
How can I get more information?

Department of Health
General information about restrictive practices in aged care are available on the Department of Health’s website.

Aged Care Quality and Safety Commission
Information about restrictive practices in aged care including education and regulatory requirements are available on the Aged Care Quality and Safety Commission’s website.

Capacity Australia
Capacity Australia has useful resources on the decision-making capacity for care recipients and their representatives.

State and territory
The State and Territory Government website will also contain information about who in that jurisdiction can make decisions for the use of a restrictive practice.